

# WICHITA-SEDGWICK COUNTY BOARD OF ZONING APPEALS

## MINUTES

**December 4, 2014**

The regular meeting of the Wichita-Sedgwick County Board of Zoning Appeals was held on Thursday, December 4, 2014 at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Carol Neugent, Vice Chair; David Foster; Bill Johnson; Joe Johnson; Don Klausmeyer; John McKay, Jr; Bill Ramsey and Chuck Warren. David Dennis; Matt Goolsby; M.S. Mitchell; Debra Miller Stevens; George Sherman and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Robert Parnacott, Assistant County Counselor; Jeff Vanzandt, Assistant City Attorney, and Maryann Crockett, Recording Secretary.

1. Approval of the May 22, 2014 Meeting minutes.

**MOTION:** To approve the May 22, 2014 meeting minutes, as amended.

**B. JOHNSON** moved, **KLAUSMEYER** seconded the motion, and it carried (5-3). **J. JOHNSON, MCKAY** and **WARREN** - Abstained.

2. **BZA2014-00066** - County request for a variance to reduce the side yard setback from 20 feet to 10 feet on property zoned RR Rural Residential generally located north and east of the intersection of East 63rd Street South and South 143rd Street East (6260 S. 143rd St. E.) on property described as:

The North 660 feet of the South 1320 feet of the West 675 feet of the Southwest Quarter EXCEPT the West 50 feet for road, Section 25, Township 28, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas.

**JURISDICTION:** The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required interior side setback from 20 to 10 feet from the south property line in RR Rural Residential ("RR") zoning. The applicant had another party construct the concrete pad for an accessory building to be constructed on the site. Unfortunately the concrete pad was placed 10 feet into the 20 foot interior side yard setback. The applicant has stated that he would like to continue the construction of the accessory building on the concrete pad. The location where the accessory building is to be constructed is one of very few places on the property where such a building could conveniently be located. The majority of the property is fenced off for the owner's horses and a number of trees would have to be removed in order for access and to place the building at another location. Also, other possible locations would prevent the owner from accessing underground utilities. The applicant stated that he has a permit for construction of the accessory building contingent on the outcome of the variance request.

All surrounding property is also zoned RR. Property north, south and east of the site is primarily developed with large lot single-family residences. West of the site is agricultural property.

**ADJACENT ZONING AND LAND USE:**

NORTH	RR	Manufactured home residence
SOUTH	RR	Single-family residence
EAST	RR	Manufactured home residence
WEST	RR	Farming, agriculture

*The five criteria necessary for approval as they apply to variances requested.*

**UNIQUENESS:** It is staff's opinion that this property is unique. The majority of the site is fenced and covered with tree growth near the residences. The applicant chose the accessory building's location to be just east of an existing accessory structure, which will be removed after the construction of the proposed building. Another reason for the proposed location is it will utilize the existing driveway without make any large extensions or reconfigurations to the driveway.

**ADJACENT PROPERTY:** It is staff's opinion that granting the variance will not adversely affect the rights of adjacent property owners, as adjacent properties are used for agriculture and large-lot residences. The proposed building is similar to accessory structures on nearby residential properties.

**HARDSHIP:** It is staff's opinion that the strict application of the zoning regulations would constitute an unnecessary hardship on the applicant. Requiring the applicant to remove the constructed concrete pad and comply with the 20 foot setback requirement would: require tree removal, would require realignment of the existing driveway and restrict access to existing underground utilities.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance will not adversely affect the public interest as the accessory building would be 220 feet from the 143<sup>rd</sup> Street East and at least 440 feet from any structures located on the surrounding properties.

**SPIRIT AND INTENT:** It is staff's opinion that the variance would not oppose the general spirit and intent of the zoning regulations, as the intent of the Zoning Code setback requirement is to maintain sufficient separation between structures, to maintain fire safety, and to provide for the circulation of light, air and traffic; the requested variance does not oppose this intent.

**RECOMMENDATION:** It is staff's opinion that the requested variance meets the five criteria necessary to grant a variance. Therefore, staff recommends that the variance be APPROVED. Should the Board determine that the necessary conditions exist to grant a variance, the Secretary recommends that the variance to reduce the interior side setback from 20 to 10 feet for an accessory building be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The interior side setback reduction from 20 to 10 feet is for the identified accessory building

only. All future building projects must conform to the Zoning Code unless additional variances or adjustments are granted.

3. The accessory building shall obtain all necessary permits, and shall conform to all other codes including but not limited to zoning and building.
4. The above conditions are subject to enforcement by any legal means available to Sedgwick County.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report.

**FOSTER** asked staff if the site was stem wall or slab on grade construction.

**SLOCUM** said he believed the construction was slab on grade.

**FOSTER** asked why an additional slab couldn't be poured and the concrete already on site left in place.

**DON SHIRLEY, AGENT FOR THE APPLICANT, 6302 EAST ONEIDA** said there was a horse stall located on the north side of the property so there was not enough room to pour an additional slab.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

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3. **BZA2014-00068** - City request for a variance on a front yard setback on SF-5 Single-family Residential zoned property generally located between I-235 and the Big Ditch, north of Central Avenue on the west side of Eisenhower Avenue (745 N. Eisenhower; assoc. with VAC2014-00031) on property described as:

The East half of lot 4, Block A, West Central Gardens Addition to Wichita, Sedgwick County, Kansas.

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant requests a variance to reduce the Unified Zoning Code (UZC) front setback requirement in SF-5 Single-family residential zoning from 25 feet to 15 feet, 6 inches for an attached garage; see the attached site plan. The UZC requires a minimum front setback of 25 feet in the SF-5 zoning district. The UZC does allow an administrative adjustment to reduce a front setback by up to 20% (or five feet in this case) when the Code criteria for zoning adjustments are met, however, anything greater than the 20% reduction would require a variance. The N. Eisenhower Avenue right of way is 15 feet containing grass and trees, between the subject property's east (front) property line and the paved curb; no sidewalk exists adjacent to the site. The site is within the West Central Gardens Addition which platted 30 foot front

setbacks along Eisenhower. The applicant vacated 5 feet of the platted 30 foot setback on the property, re-establishing the setback at 25 feet, the front setback permitted under the UZC (VAC2014-00031). The application area is developed with a single-family residence and the attached garage on the site has been built 9 feet, 6 inches into the 25-foot setback from the front property line. The applicant requests approval of the variance to allow the location of the existing attached garage.

All immediately surrounding properties are zoned SF-5 Single-family Residential and developed with single-family residences. N. Eisenhower Avenue is a paved local street with a 60 foot right of way at this location.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residence
SOUTH:	SF-5	Single-family residence
EAST:	SF-5	Single-family residence
WEST:	SF-5	Single-family residence

*The five criteria necessary for approval as they apply to the requested variance.*

**UNIQUENESS:** It is staff's opinion that this property is unique in that this segment of Eisenhower Avenue has a larger than normal right-of-way. Fifteen feet of right-of-way exists between the Eisenhower Avenue curb and the applicant's property line, leaving 31 feet, adequate separation, between the attached structure and the paved street. Most SF-5 zoned neighborhoods have 10 feet or less of right-of-way between the property line and paved street. The distance between the property line and paved curb, allows for more than adequate separation between buildings and the street.

**ADJACENT PROPERTY:** It is staff's opinion that granting the requested variance would not adversely affect the rights of adjacent property owners. The proposed setback reduction would not hinder visibility up and down Eisenhower Avenue for adjacent property owners and would not negatively impact adjacent properties. The existing landscaping along the north property line screens the addition from the most possibly affected properties to the north.

**HARDSHIP:** It is staff's opinion that the strict application of the provisions of the code would constitute a hardship upon the applicants. Without the requested front setback variance, the applicants could not feasibly improve the property with a garage and the security of having the garage attached to the principal structure.

**PUBLIC INTEREST:** It is staff's opinion that the requested variance for a setback reduction will not adversely affect the public interest, as further improving this property is in the public interest, and the requested variance will have no impact on the public right of way and vehicular or pedestrian circulation.

**SPIRIT AND INTENT:** It is staff's opinion that granting the requested variance for a setback reduction does not oppose the general spirit and intent of the Zoning Code. Front building

setbacks are intended to ensure separation between structures and the public right of way. Adequate separation between the attached structure and the street will be maintained.

**RECOMMENDATION:** It is staff's opinion that the requested variance of the Zoning Code to reduce the front setback requirement from 25 feet to 15 feet, 6 inches is appropriate for this site. Should the Board determine that the criteria necessary to grant a variance exists, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The front setback reduction shall apply only to the attached garage as shown on the site plan. Any future buildings on this site shall conform to Zoning Code required setbacks unless a separate Administrative Adjustment or Variance is approved.
3. The addition shall meet building code, fire code and all other applicable code requirements. The applicant shall obtain all permits necessary to build the structure within one year of variance approval, unless such time is extended by the BZA.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **KLAUSMEYER** seconded the motion, and it carried (8-0).

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The Wichita-Sedgwick County Board of Zoning Appeals adjourned at 1:40 p.m.

State of Kansas            )  
Sedgwick County        ) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Board of Zoning Appeals do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Board of Zoning Appeals, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Board.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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John L. Schlegel, Secretary  
Wichita-Sedgwick County Board of  
Zoning Appeals

(SEAL)